Johns. 184, it was said that ejectment would only lie for something attached to the soil. In an early case it was held that such an action would not lie for a water course or rivulet though its name be mentioned, because it would be impossible to give execution of a thing which is transient and always running. *Adams on Ejectment*, 18. Such possession as is required can be given of mines, quarries and upper rooms in a house, because in each of these cases there is something which may be physically possessed. But a sheriff can no more deliver such possession of obstructed space by removing the obstructions as suggested by the present decision, than he can give physical possession of an easement by removing a nuisance which interferes with its enjoyment.

POLICE POWER—CONSTITUTIONAL LAW—REGULATION OF EXPRESS COMPANIES.

In view of the many important enactments, state and Federal, of late years, prohibiting discriminations in rates and service by public service corporations, and which have been upheld by the courts, the recent holding of the Supreme Court of Indiana in the case of *American Express Co. v. Southern Indiana Express Co.* (78 N. E. Rep. 1021), is perhaps in line with the weight of authority on this point.

The statute of Indiana (Acts 1901, p. 149), provides that express companies shall grant to all consignors, including other responsible express companies as consignors, equal terms and accommodations in the carriage and continuance of carriage of goods and prohibits them from granting to any one carrier any privileges or accommodations not granted to all others.

The case under discussion arose on a statutory remedy of injunction sought by the appellee for a violation of the above statute, and upon the hearing the act was declared a valid exercise of the police power and not violative of the fourteenth amendment of the Federal Constitution on the ground that it is an attempt to deprive an express company of its rights and to take its property without due process of law; and further, that it attempts to take from an express company the common law right to contract. Although the court does not enter into a discussion of the police power of the state, its decision is fully sustained by the decisions of the same and other courts.

"Great interests which have grown up and which closely and seriously affect the commercial convenience and prosperity of all the people of the state.—interests which, in their present form and dimensions, were unknown to the common law—are both proper and necessary subjects of police protection, regulation and control. It cannot be safely admitted that these vast and powerful agencies, by and through which a large part of the carrying trade of the people of the state is conducted, are beyond the control of the legislature. The well-being of the people demands that they shall at all times be subject to the rein and curb of the law, and that their methods of conducting their business must

conform to those principles of fairness and justice with which the interests of the public are inseparably bound up. The relations of such agencies to the public and to each other, and an authoritative declaration and definition of their duties and obligations, are clearly within the scope of legislative authority wherever important public interests are involved." (*Adams' Express Co. v. State*, 161 Ind. 328.)

The act under examination belongs to that class of legislation which has been found necessary to prevent the destruction of competition, and exclusive possession by the few of the great fields of industry and enterprise. It has never been denied that in the exercise of the police power, property rights may be sacrificed, natural privileges curtailed, and liberty restricted or taken away. However, as the public peace, safety and well-being are the very end and object of free government, legislation which is necessary for the protection and furtherance of this object cannot be defeated on the ground that it interferes with the common law rights of some of the citzens, or even deprives them of such rights. (*Railroad v. Jackson*, 179 U. S. 287.)

While the tendencies of these decisions, carried to extreme limits, would seem to subject the public to any and all sorts of legislation enacted under the guise of an exercise of the police power, yet this danger is not apparent when it is considered that review may be had by the courts of all such legislation where constitutional rights and guaranties are involved, thus limiting, in such cases, the otherwise sole and absolute legislative discretion in matters involving the public welfare.

MORTGAGES—INJUNCTION TO RESTRAIN FORECLOSURE UNDER POWER OF SALE—LIMITATIONS.

House v. Carr, 78 N.E. 176, decided by the Court of Appeals of New York, presents an unusual as well as difficult question of equity. The suit was brought by the successors of the mortgagor to restrain by injunction the foreclosure of a mortgage barred by the statute of limitations. For twenty years the original mortgagee made no effort to enforce his right against the mortgagor and for over seven years after the statute of limitations had run he made no demand upon the successors of the mortgagor in possession of the land. Satisfaction of the mortgage was not claimed in the complaint. The foreclosure was being sought by the administrator of the mortgagee. This court refused to restrain the foreclosure reversing the judgment of the Appellate Division. Vann, Haight and Werner, JJ., *dissenting*. The majority opinion delivered by Cullen, C. J., cites *Goldfrank v. Young*, 64 Tex. 432 as in point and follows its arguments considerably. In that case a sale under a trust deed was allowed, although the right of action secured thereby was barred by the statute of limitations. The creditors had urged their claims and no great time had elapsed as in this case of *House v. Carr*. There the very attitude of the debtor clearly showed a calculating inten-